



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: CWA - 203659

PRELIMINARY RECITALS

Pursuant to a petition filed on November 5, 2021, under Wis. Admin. Code § HA 3.03, to review a decision by the ADRC of Central WI regarding Medical Assistance (MA), a hearing was held on December 22, 2021, by telephone.

The issue for determination is whether the respondent correctly determined that petitioner is not functionally eligible for the IRIS program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
ADRC of Central WI
2600 Stewart Ave, Suite 25
Wausau, WI 54401

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Marathon County. She has medical diagnoses that include chronic migraine, parasthesias, anxiety and depression. She has a history of traumatic brain injury in 2011.

2. On or about September 27, 2021, the ADRC completed a Long-Term Care Functional Screen (LTCFS) interview with the Petitioner. The screener determined that the Petitioner requires assistance with 0 activities of daily living (ADLs). The screener also determined the Petitioner requires assistance with 2 instrumental ADLs (IADLs): meal preparation and laundry/chores. The screen calculated that the Petitioner met a non-nursing home level of care.
3. October 12, 2021, the agency issued written notice to the Petitioner indicating that she could enroll in the Family Care program at a non-nursing home level of care.
4. On October 12, 2021, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require that the Department's agent must assess the participant's needs and preferences (including health status) as a condition of IRIS participation. Id., §441.466. The Department's agent must also develop a service plan based on the assessed needs. Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out" Id. §441.468.

An IRIS participant must be elderly, or an adult with physical or developmental disabilities. See §1.1A of the IRIS Policy Manual at www.dhs.wisconsin.gov/publications/p0/p00708.pdf. The disabilities must be such that the person requires a level of care equal to the level of a nursing home. Manual, §1.2B.2. To qualify for a nursing home level of care a person must have a long-term care condition expected to last at least one year. See, Overview of the Long-Term Care Functional Screen, §1.2.

The Long-Term Care Functional Screen (LTCFS) is a computer program used by the Department to determine an individual's level of care, which is also known as a functional level, and ultimately, the individual's eligibility for IRIS services. Wis. Admin. Code. § DHS 10.33(2)(a). A person's functional level of care determines whether a service will be covered. Generally, the level of supportive home care services depends upon whether a person is determined to require a nursing home level of care or non-nursing home level of care.

The terms "nursing home level of care" and "non-nursing home level of care" are given general definitions in Wis. Stats §46.286(1)(a):

(a) Functional eligibility. A person is functionally eligible if the person's level of care need, as determined by the department or its designee, is either of the following:

1m. The nursing home level, if the person has a long-term or irreversible condition, expected to last at least 90 days or result in death within one year of the date of application, and requires ongoing care, assistance or supervision.

2m. The non-nursing home level, if the person has a condition that is expected to last at least 90 days or result in death within 12 months after the date of application, and is at risk of losing his or her independence or functional capacity unless he or she receives assistance from others.

In further defining levels of care, Wis. Admin. Code §10.33(2)(c) and (d) refers to "nursing home level of care" as "Comprehensive functional capacity" and it refers to "non-nursing home level of care" as "intermediate functional capacity":

Comprehensive functional capacity level. A person is functionally eligible at the comprehensive level if the person requires ongoing care, assistance or supervision from another person, as is evidenced by any of the following findings from application of the functional screening:

1. The person cannot safely or appropriately perform 3 or more activities of daily living.
2. The person cannot safely or appropriately perform 2 or more ADLs and one or more instrumental activities of daily living.
3. The person cannot safely or appropriately perform 5 or more IADLs.
4. The person cannot safely or appropriately perform one or more ADL and 3 or more IADLs and has cognitive impairment.
5. The person cannot safely or appropriately perform 4 or more IADLs and has cognitive impairment.
6. The person has a complicating condition that limits the person's ability to independently meet his or her needs as evidenced by meeting both of the following conditions:
 - a. The person requires frequent medical or social intervention to safely maintain an acceptable health or developmental status; or requires frequent changes in service due to intermittent or unpredictable changes in his or her condition; or requires a range of medical or social interventions due to a multiplicity of conditions.
 - b. The person has a developmental disability that requires specialized services; or has impaired cognition exhibited by memory deficits or disorientation to person, place or time; or has impaired decision making ability exhibited by wandering, physical abuse of self or others, self-neglect or resistance to needed care.

Activities of daily living, or ADLs, refer to “bathing, dressing, eating, mobility, transferring from one surface to another such as bed to chair and using the toilet.” Wis. Admin. Code, §DHS 10.13(1m). Instrumental activities of daily living, or IADLs, refer to “management of medications and treatments, meal preparation and nutrition, money management, using the telephone, arranging and using transportation and the ability to function at a job site.” Wis. Admin. Code, § 10.13(32).

At hearing, the respondent’s representatives testified and established the findings made that were incorporated in the LTCFS. Petitioner was found to require no assistance with ADLs, despite some issues with balance. Petitioner was also noted to lack any diagnosis of cognitive impairment, despite the Petitioner’s history of traumatic brain injury. The respondent also found that Petitioner needed assistance with IADLs of meal preparation and laundry/chores, in ultimately concluding that the Petitioner is eligible for certain benefit enrollment at a non-nursing home level of care.

Petitioner countered that it does not appear that some of her more recent medical records were reviewed by the respondent. Petitioner provided several screen shots related thereto. I have reviewed those records, and do not find that to be in conflict with the LTCFS information. I also did not note any cognitive impairment diagnosis. While Petitioner’s mother asserts there is cognitive impairment, including short-term memory loss, relating back to Petitioner’s 2011 traumatic brain injury, the record lacks corroboration. Petitioner has not established any error by the respondent in concluding that she is independent in all ADLs, nor has she established on this record that she suffers from cognitive impairment.

As noted in the Administrative Code’s comprehensive functional capacity level requirements, where an individual requires no assistance with ADLs, she would need to demonstrate need for assistance with at least four IADLs and have a cognitive impairment. The limited medical records submitted in this matter do not allow me to make a conclusion regarding the existence of cognitive impairment here. I note that,

even were I to find evidence of a cognitive impairment, the Petitioner has not demonstrated that she needs assistance with at least four IADLs. The respondent has conceded that she needs assistance with two IADLs, and Petitioner has argued that the transportation IADL and/or medication assistance IADL could require assistance. Petitioner has not, however, established that she is not capable of managing her transportation or medication administration needs. I also note that, without establishing a cognitive impairment diagnosis, Petitioner remains unable to demonstrate eligibility at a comprehensive, or nursing home, level of care.

I note to petitioner that nothing in this Decision precludes her from again pursuing a functional eligibility LTCFS in the future.

CONCLUSIONS OF LAW

The Petitioner is not functionally eligible for the IRIS program.

THEREFORE, it is **ORDERED**

That Petitioner's appeal is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

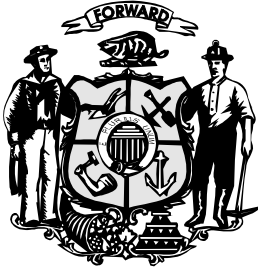
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 14th day of January, 2022



\s _____

Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 14, 2022.

ADRC of Central WI
Bureau of Long-Term Support